

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Townsend	Team: Squad #7	CCRB Case #: 201403026	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/26/2014 8:15 PM	Location of Incident: Hylan Boulevard and Buel Avenue	Precinct: 122	18 Mo. SOL 9/26/2015	EO SOL 9/26/2015	
Date/Time CV Reported Mon, 03/31/2014 2:38 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/31/2014 2:38 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Albert Cabello	02759	938140	122 PCT
2. POM Edgardo Diaz	09558	948883	122 PCT
3. SGT Ilya Dimantov	4423	942775	122 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Stephanie Bowman	09173	948049	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Albert Cabello	Abuse: On March 26, 2014, Sgt. Albert Cabello stopped the car in which § 87(2)(b) was an occupant at Hylan Boulevard and Buel Avenue in Staten Island.	
B.POM Edgardo Diaz	Abuse: On March 26, 2014, PO Edgardo Diaz frisked § 87(2)(b) at Hylan Boulevard and Buel Avenue in Staten Island.	
C.POM Edgardo Diaz	Abuse: On March 26, 2014, PO Edgardo Diaz searched § 87(2)(b) at Hylan Boulevard and Buel Avenue in Staten Island.	
D.SGT Albert Cabello	Abuse: On March 26, 2014, Sgt. Albert Cabello searched the car in which § 87(2)(b) was an occupant at Hylan Boulevard and Buel Avenue in Staten Island.	
E.SGT Albert Cabello	Abuse: On March 28, 2014, Sgt. Albert Cabello did not process § 87(2)(b)'s complaint regarding officers at the 122nd Precinct stationhouse.	
F.SGT Ilya Dimantov	Abuse: On March 28, 2014, Sgt. Ilya Dimantov did not process § 87(2)(b)'s complaint regarding officers at the 122nd Precinct stationhouse.	

Case Summary

On March 26, 2014, at approximately 8:15 p.m., Sgt. Albert Cabello, PO Stephanie Bowan and PO Edgardo Diaz stopped § 87(2)(b)'s vehicle near Hyland Boulevard and Buel Avenue in Staten Island (**Allegation A**). PO Diaz then frisked § 87(2)(b) (**Allegation B**). § 87(2)(b) alleged that PO Diaz searched all of his jacket and pants pockets (**Allegation C**). During the interaction, a knife of an unspecified size was recovered from § 87(2)(b)'s clothing. § 87(2)(b) further alleged that all three officers searched his vehicle, but he was unable to describe each officer's actions or the search in detail (**Allegation D**). § 87(2)(b) was released from custody without being issued a summons or arrested. On March 28, 2014, § 87(2)(b) arrived at the 122nd Precinct stationhouse to file a complaint against the officers. § 87(2)(b) alleged that both Sgt. Cabello and Sgt. Ilya Dimantov refused to take his complaint (**Allegations E and F**).

§ 87(2)(g)

Mediation, Civil and Criminal Histories

§ 87(2)(b) declined to mediate with the subject officers (encl. 7b). On January 20, 2015, a Notice of Claim inquiry was submitted with the City of New York, and as of February 10, 2015, the results are still pending. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed three previous CCRB complaints, § 87(2)(b)
- Sgt. Cabello has been a member of the service for nine years and there are no substantiated allegations against him § 87(2)(g) (encl. 3a)
- PO Diaz has been a member of the service for four years and this was the first CCRB complaint filed against him. Since this complaint was filed, a second complaint was filed against PO Diaz alleging an improper stop and search, but this complaint was closed as complainant uncooperative (encl. 4a).
- Sgt. Dimantov has been a member of the service for eight years and this was the first CCRB complaint filed against him (encl. 5a).

Potential Issues

- Various surrounding businesses were contacted in an effort to locate video footage or independent witnesses (encl. 26a – 26i). § 87(2)(b), § 87(2)(b), witnessed the onset of the interaction and provided a phone statement to the CCRB. He initially stated that he witnessed officers search the vehicle, but then redacted the statement and stated that he only witnessed the officers approach § 87(2)(b)'s vehicle. He stated that he left the location prior to the time in which the frisk, search and vehicle search were alleged (encl. 10a). No video footage or additional witnesses were revealed.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(g)

§ 87(2)(g)

- § 87(2)(b) described the officer who refused to take his complaint as a 35 to 40-year-old white man with a medium build and black hair who was dressed in uniform (encl. 8c). According to the roll call (encl. 34i), Sgt. Dimantov was assigned to the desk at the time of the incident and confirmed that he was physically at the desk, as he identified the handwriting in the command log as his own (encl. 18a – 18d, 23a – 23d). Furthermore, Sgt. Dimantov matched the description provided by § 87(2)(b) as he is a § 87(2)(b)-old, 5’10” tall, 180-pound white man with black hair who was working in uniform at the time of the incident (encl. 18d), § 87(2)(g).

Allegations not pleaded

- § 87(2)(g)
- § 87(2)(g)

Allegation A -Abuse of Authority: On March 26, 2014, Sgt. Albert Cabello stopped the car in which § 87(2)(b) was an occupant at Hylan Boulevard and Buel Avenue in Staten Island.

§ 87(2)(b) stated that he stopped at the red light on Hylan Boulevard and Buel Avenue, waited for the light to turn green, and then turned right onto Hyland Boulevard (encl. 8a – 8d, 9a). All three officers unanimously stated that § 87(2)(b) turned right through a red light. PO Bowman and Sgt. Cabello were consistent in their CCRB statements, and PO Diaz noted in his memo book, that § 87(2)(b) apologized for running the red light and stated that he was from Florida, where it is legal to make a right turn while the light is red (encl. 12a – 12d, 13d, 16c – 16d). All three officers noted that § 87(2)(b)'s actions of running the red light, reversing back through the red light, then pulling forward again led them to believe that § 87(2)(b) may be driving while intoxicated, § 87(2)(g).

§ 87(2)(b) Sgt. Cabello did not notice any additional behaviors, whereas PO Diaz noted that § 87(2)(b) forgot to put his vehicle in park and was smiling and bobbing his head while speaking with the officers. PO Bowman observed § 87(2)(b)'s eyes to be red and watery, but she did not smell alcohol.

§ 87(2)(g)

The handwritten stop, question and frisk report, prepared by PO Diaz, noted that officers stopped § 87(2)(b) because he was suspected of grand larceny auto, he was observed disobeying a stop light, almost running over a pedestrian, and he was removed from the vehicle on suspicion of driving while intoxicated (DWI). The report also noted that § 87(2)(b)'s furtive movements contributed to the stop (encl. 14a – 14b).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: On March 26, 2014, PO Edgardo Diaz frisked § 87(2)(b) at Hylan Boulevard and Buel Avenue in Staten Island.

Allegation C – Abuse of Authority: On March 26, 2014, PO Edgardo Diaz searched § 87(2)(b) at Hylan Boulevard and Buel Avenue in Staten Island.

It is undisputed that PO Diaz frisked and searched § 87(2)(b) § 87(2)(b) alleged that PO Diaz frisked his entire body, removed a knife from his right coat pocket, and then proceeded to search each of his pants and coat pockets. Though § 87(2)(b) described the knife as small, he could not approximate the size of the blade (encl. 8a – 8d).

PO Diaz stated that § 87(2)(b) had his hands in his coat pockets, and after three requests to remove his hands, § 87(2)(b) finally complied. At this point, PO Diaz, Sgt. Cabello and PO Bowman all stated that they observed the tip of a metal knife visibly protruding from § 87(2)(b) s pocket (encl. 12a – 12d, 15a – 15d, 17a – 17c). PO Diaz frisked § 87(2)(b) felt a sharp object, and then removed a 12” long switchblade knife, which folds down to 6”, from § 87(2)(b) s right coat pocket. PO Diaz denied searching § 87(2)(b) s left coat pocket and pants pockets (encl. 15a – 15d).

Officers may frisk an individual when they fear for their safety based on the observation that the individual reaches toward their pocket, against the instruction of the officer. *People v. Robinson*, 278 A.D.2d 808 (4th Dept. 2000) (encl. 1a – 1b). An officer possesses reasonable suspicion to search when his observations show that the object is “at least likely” to be an illegal weapon. *People v. Fernandez*, 60 A.D.3d 549 (1st Dept. 2009) (encl. 1c). New York law prohibits an individual from carrying a knife with a blade four inches or longer in a public place. *NYC Administrative Code*, Section §10-133 (encl. 1d).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Sgt. Cabello stating that the entire knife was 5” and PO Bowman stating that the knife had a 4” blade § 87(2)(g)

§ 87(2)(b) Sgt. Cabello noted that PO Diaz removed the knife then frisked § 87(2)(b) s coat pocket, but nowhere else, and PO Bowman stated that PO Diaz removed § 87(2)(b) s wallet from his back pocket and searched his fanny pack. No other party – including § 87(2)(b) – stated that § 87(2)(b) was wearing a fanny pack, § 87(2)(g) or that an officer removed a wallet from one of his pockets. PO Bowman, the only officer to allude that the search may have exceeded the one pocket, § 87(2)(g)

The stop, question and frisk report noted that § 87(2)(b) was frisked due to a “large bulge – found one large knife in pocket.” PO Diaz checked the box on the report noting that § 87(2)(b) was not searched (encl. 14a – 14b). The location of the bulge and the pocket in which the knife was recovered from were not addressed in the report.

§ 87(2)(g)

Allegation D – Abuse of Authority: On March 26, 2014, Sgt. Albert Cabello searched the car in which § 87(2)(b) was an occupant at Hylan Boulevard and Buel Avenue in Staten Island.

It is undisputed that Sgt. Cabello searched § 87(2)(b)'s vehicle.

§ 87(2)(b) initially stated that all three officers searched his vehicle after he was frisked. He then stated Sgt. Cabello and PO Bowman searched his vehicle while PO Diaz frisked him, but that PO Diaz joined in the car search after the frisk was done. § 87(2)(b) could not give any account of where specifically in his vehicle the officers searched, though he stated that he observed all three officers fully enter his vehicle. After the search, § 87(2)(b) stated that Sgt. Cabello commented on the soda bottles scattered about his vehicle and mentioned that he had never seen the brand of soda before (encl. 8a – 8d, 9a) (Trader Joe's Vintage Soda encl. 20a).

From the passenger window, Sgt. Cabello stated that he observed three brown glass bottles on the passenger floor of § 87(2)(b)'s vehicle, which he believed to be alcohol. Given that Sgt. Cabello had stopped § 87(2)(b) on suspicion of driving while intoxicated, based solely on his observations that § 87(2)(b) turned right on a red light then reversed his vehicle back through the red light, he believed the bottles would confirm his suspicion that § 87(2)(b) was drinking. After § 87(2)(b) was removed from the vehicle, Sgt. Cabello opened the passenger door, picked up the bottles, determined that they were soda, and replaced them. Sgt. Cabello did not search any other area of the vehicle and did not see another officer search the vehicle at any point (encl. 12a – 12d).

PO Diaz denied personally searching the vehicle and initially stated that he did not see Sgt. Cabello search the vehicle, but later stated that Sgt. Cabello may have reached into the vehicle through an open window to remove a bottle from the center console (encl. 15a – 15d). PO Bowman denied searching the vehicle and did not see Sgt. Cabello search the vehicle (encl. 17a – 17c). § 87(2)(g)

Under the automobile exception, an officer may search a vehicle when they have probable cause that the vehicle contains evidence or contraband and there is a connection between the arrest and the probable cause for the search. People v. Baez, 24 A.D.3d 112 (2005) (encl. 1e – 1g). When an officer sees an object in plain view that is indicative of a crime, the officer may seize the object without a warrant if: “(1) the police are lawfully in the position from which the object is viewed; (2) the police have lawful access to the object; and (3) the object’s incriminating nature is immediately apparent.” People v. Noriega, 23 Misc. 3d 1124(a) (2009) (encl. 2a – 2d).

At the time Sgt. Cabello viewed the bottles, he was standing on a public roadway outside of § 87(2)(b)'s passenger window during a routine traffic stop, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: On March 28, 2014, Sgt. Albert Cabello did not process § 87(2)(b) s complaint regarding officers at the 122nd Precinct stationhouse.

Allegation F – Abuse of Authority: On March 28, 2014, Sgt. Ilya Dimantov did not process § 87(2)(b) s complaint regarding officers at the 122nd Precinct stationhouse.

It was undisputed that § 87(2)(b) arrived at the 122nd Precinct stationhouse and expressed interest in filing a complaint against Sgt. Cabello, PO Diaz and PO Bowman. § 87(2)(b) alleged that the desk sergeant, identified as Sgt. Ilya Dimantov, and Sgt. Cabello both refused to take his complaint.

Sgt. Cabello stated that he never refused to take § 87(2)(b) s complaint and instead gave him two complaint forms to fill out (encl. 12a – 12d). PO Diaz stated that no officer refused to take § 87(2)(b) s complaint, and that he personally provided § 87(2)(b) with five complaint forms since § 87(2)(b) stated he wanted to file so many complaints (encl. 15a – 15d). PO Bowman did not see anyone provide § 87(2)(b) with a complaint form, but she did see Sgt. Dimantov printing one, which she believed he later gave to § 87(2)(b) (encl. 17a – 17c). Sgt. Dimantov did not recall this incident (encl. 18a – 18d).

This complaint was received when § 87(2)(b) filed it with the CCRB via phone, and no other referrals have since been received at the CCRB in regard to this incident (encl. 7a – 7b). There were no entries in the command log referencing this incident (encl. 23a – 23d).

§ 87(2)(g)

Team: Pod 7

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date